

Message Text

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ACTION STR-07

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AID-05 SS-15 ITC-01 TRSE-00 USIA-06 SP-02 SOE-02
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INFO AMEMBASSY TOKYO

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E.O. 11652: N/A
TAGS: MTN, ETRD, JA
SUBJECT: BILATERAL REVIEW OF U.S. AND JAPANESE NTM
- OFFERS ON INDUSTRIAL PRODUCTS

REF: (A) GENEVA 2905; (B) GENEVA 2926; (C) STATE 10625;
(D) 77 GENEVA 5815

1. SUMMARY: AS FOLLOW-UP TO 23 FEBRUARY MEETING (REFS
(A) AND (B)) U.S. AND JAPANESE DELS MET FOR PRELIMINARY
REVIEW AND CLARIFICATION OF NTM OFFERS. WHILE GENERAL
TONE OF MEETING WAS FRIENDLY AND USEFUL CLARIFICATION
WAS PROVIDED, SESSION WAS ACCENTED BY SHARP JAPANESE
CRITICISM OF U.S. OFFER. U.S. COUNTERED WITH VIGOROUS
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DEFENSE OF FORTHCOMING U.S. NTM OFFERS AND REFERRED
TO U.S. COMMENTS OF 23 FEBRUARY MEETING EXPRESSING
DISAPPOINTMENT WITH JAPANESE OFFER. END SUMMARY.

2. REVIEW OF U.S. NTM OFFERS: JAPANESE REP (TERADA,
TAMORI, MIYAKE, AND TOKYO TEAM) EXPRESSED APPRECIATION
FOR THE OPPORTUNITY TO GAIN CLARIFICATION OF THE U.S.

NTM OFFER ON INDUSTRIAL PRODUCTS WHICH THEY ASSERTED WAS FORMULATED IN "VAGUE TERMS". THE DISCUSSION PROCEEDED TO AN ITEM BY ITEM REVIEW OF THE U.S. OFFER. IN RESPONDING TO PARTICULAR JAPANESE QUESTIONS, U.S. DEL (NEWKIRK) DREW ON BACKGROUND MATERIAL SUPPLIED BY WASHINGTON AGENCIES. HIGHLIGHTS OF DISCUSSIONS ARE AS FOLLOWS:

A. DISC - AFTER DISCUSSION OF CURRENT U.S. ADMINISTRATION POSITION ON THE DISC, JAPANESE REPRESENTATIVES SOUGHT CLARIFICATION AS TO WHETHER THE U.S. IS LINKING ABOLITION OF DISC WITH ABOLITION OF CERTAIN DIRECT TAX PRACTICES OF CERTAIN EUROPEAN COUNTRIES CITED IN THE RECENT GATT PANEL FINDING. U.S. DEL SAID THAT, ACCORDING TO OUR INFORMATION, THE U.S. OFFER ON DISC IN MTN IS NOT CONDITIONED UPON THE RESULTS OF DISCUSSIONS IN THE GATT, BUT THAT U.S. PROPONENTS OF DISC MIGHT ADVOCATE THIS LINKAGE.

B. SECTION 337 - JAPANESE DEL INQUIRED AS TO WHAT SPECIFIC AMENDMENTS THE U.S. WOULD CONSIDER WITH RESPECT TO SECTION 337 IF THERE WERE SUCCESSFUL NEGOTIATIONS IN SUBSIDIES/CVD. U.S. DEL STATED THAT NATURE OF CHANGES U.S. WOULD CONSIDER WOULD DEPEND UPON THE FINAL SHAPE OF THE SUBSIDIES/CVD AGREEMENT. TAMORI EXPRESSED CONCERN THAT PARAGRAPH (B)(3) OF SECTION 337 REQUIRING THE INTERNATIONAL TRADE COMMISSION TO REFER EVIDENCE LIMITED OFFICIAL USE

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OF DUMPING OR SUBSIDIZATION TO TREASURY FOR APPROPRIATE ACTION FOSTERS DUPLICATION OF INVESTIGATIONS RATHER THAN LIMITING THEM. JAPANESE DEL WOULD APPRECIATE OFFICIAL U.S. INTERPRETATION ON THIS POINT. IN ADDITION, REMEDY OF EXCLUSION OF IMPORTS UNDER SECTION 337 IS, IN JAPANESE VIEW, INCONSISTENT WITH ANY GATT PROVISION. ALTHOUGH JAPANESE DEL APPRECIATED THE POINT THAT SUCH EXCLUSION WAS NORMAL IN PATENT INFRINGEMENT CASES (AND SANCTIONED UNDER GATT ARTICLE XX) THEY POINTED TO RECENT WIDER INTERPRETATION OF "UNFAIR TRADE" PRACTICES UNDER SECTION 337 BY THE ITC TO COVER MEASURES (E.G., DUMPING AND SUBSIDIZATION) WHICH ARE COVERED BY SPECIFIC GATT REMEDIES (I.E., ANTIDUMPING AND COUNTERVAILING DUTIES). TERADA SUGGESTED THAT THIS ITEM MIGHT BE SUBJECT TO A SUPPLEMENTAL REQUEST BY JAPAN TO THE U.S.

C. FINAL LIST, ASP, CVD: JAPANESE REITERATED THEIR STRONG DESIRE FOR ELIMINATION OF FINAL LIST AND ASP AND THE ADOPTION OF AN INJURY REQUIREMENT IN THE U.S. COUNTERVAILING DUTY LAW. THEY NOTED THE U.S. POSITION THAT THESE ISSUES WOULD BE BEST HANDLED IN THE MULTILATERAL NEGOTIATIONS ON CODES.

D. ANTIDUMPING - U.S. DEL REITERATED LONG-STANDING
U.S. POSITION THAT THIS ISSUE IS MORE APPROPRIATELY
DISCUSSED IN THE CONTEXT OF THE GATT ANTIDUMPING COMMIT-
TEE. IN THIS REGARD, U.S. DEL NOTED THAT A SPECIAL MEET-
ING HAD BEEN CONVENED IN EARLY APRIL TO DISCUSS SPECIFIC
PROBLEMS. TAMORI SAID THAT WHILE JAPAN ACCEPTED THE
U.S. POSITION NOT TO DISCUSS ANTIDUMPING ON A MULTILATERAL
BASIS IN THE MTN, THEY BELIEVE THEY HAVE A RIGHT TO
RAISE THE ISSUE BILATERALLY. TERADA CITED LACK OF
RESULTS OF ANTIDUMPING COMMITTEE DISCUSSIONS AND
CHARGED THAT THE U.S. WAS TRYING TO AVOID ANY SUB-
STANTIVE DISCUSSION OF ANTIDUMPING ISSUES IN EITHER
MTN OR GATT. ISSUE OF PRIMARY CONCERN RELATES TO
U.S. LAW AND ITS ADMINISTRATION (E.G. PRICE COMPARISONS,
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TIME LAG ON ASSESSMENT OF ANTIDUMPING DUTIES, AND REVO-
CATION POLICY) AND ARE TOPICS SUSCEPTIBLE TO BILATERAL
RESOLUTION. U.S. DEL SUGGESTED THAT MORE PRODUCTIVE
DISCUSSION COULD TAKE PLACE WITH U.S. ANTIDUMPING
EXPERTS AT THE APRIL MEETING OF THE GATT ANTIDUMPING

COMMITTEE.

E. TAX ON CARGO AND SHIPPING CONTAINERS: JAPAN
DEL PROPOSED THAT THE BASIC PRINCIPLE OF TAXATION ON
CARGO AND SHIPPING CONTAINERS SHOULD BE THAT THE EX-
PORTING COUNTRY APPLY THE TAXES AND NOT THE HOST
COUNTRY. IN RESPONSE TO U.S. QUERY, TAMORI ASSERTED
THAT JAPAN WAS INTERESTED IN CONTAINERS OF LESS THAN
1,000 CUBIC FEET, THE ONLY CONTAINERS SUBJECT TO THE
CALIFORNIA TAX FROM JANUARY 1975 TO MARCH 1978.

3. TERADA PRESENTED CLOSING REMARKS, SHARPLY CRITICIZING
U.S. OFFERS AS "DISAPPOINTING" AND ALLEGING THAT HE
DID NOT FIND "ANY RESPONSIBLE OFFER FROM U.S." HE FUR-
THER STATED THAT "CONDITIONAL" NATURE OF U.S. OFFERS,
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I.E. THAT CONGRESSIONAL APPROVAL NECESSARY, FURTHER DE-
PRECIATED ITS OFFER. U.S. SIDE STRONGLY REBUTTED ALLE-
GATIONS, POINTING TO POSITIVE ACTION ON SEVERAL MEASURES
AND FACT THAT JAPANESE REQUESTS AND U.S. OFFERS ARE
LINKED TO ACTIVITIES ON THE VARIOUS NTM CODES UNDER
ACTIVE NEGOTIATION. U.S. DEL POINTED TO FACT THAT
WE HAD RESPONDED TO EVERY JAPANESE REQUEST AND THAT NOT
ONE OF U.S. OFFERS WERE TOTALLY NEGATIVE. HE FURTHER
SUGGESTED THAT JAPANESE OFFER BE EXAMINED IN THIS
CONTEXT. U.S. ALSO POINTED OUT NECESSITY FOR DIET
APPROVAL OF MANY POSSIBLE JAPANESE CONCESSIONS.

4. HIGHLIGHTS OF DISCUSSION ON JAPANESE NTM OFFERS
ARE AS FOLLOWS:

A. CUSTOMS CHARGES AND FORMALITIES ON REIMPORTED
REPAIRED MERCHANDISE: JAPANESE DEL POINTED OUT THAT
UNDER THE CURRENT SYSTEM TO AVOID ASSESSMENT OF DUTY
ON THE TOTAL VALUE OF THE REIMPORTED MERCHANDISE AND ASS-
ESS JUST THE VALUE OF THE REPAIR, THE REPAIR MUST
BE (A) DEEMED TO BE DIFFICULT TO BE CARRIED OUT IN
JAPAN AND (B) MERCHANDISE MUST BE REIMPORTED WITHIN
ONE YEAR. GOJ NTM OFFER IS TO REMOVE THE PROCEDURAL
BLOCK OF THE FIRST CONDITION (A). SUCH A CHANGE WILL
REQUIRE DIET APPROVAL. WITH REMOVAL OF THIS CONDI-
TION, IN ADDITION TO EXPEDITING NORMAL PROCEDURES FOR
EXPORTING MERCHANDISE TO BE REPAIRED, THE DUTY ON
THE REIMPORTED MERCHANDISE WILL BE ASSESSED ONLY ON
THE VALUE OF REPAIRS, ON A CIF BASIS. THUS, UNDER
THE NEW SYSTEM, ONLY REIMPORTED REPAIRED MERCHANDISE
IMPORTED ONE YEAR AFTER IT WAS EXPORTED FOR REPAIR WILL
BE SUBJECT TO DUTY ON THE FULL VALUE OF MERCHANDISE.
JAPANESE EXPERT POINTED OUT THAT CUSTOMS OFTEN WAIVES

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THIS ONE YEAR REQUIREMENT. JAPANESE DEL SAID THAT THEY ARE STUDYING POSSIBILITIES FOR FURTHER SIMPLIFYING PROCEDURES FOR IDENTIFICATION OF GOODS TO BE EXPORTED FOR REPAIR.

B. ADMINISTRATIVE GUIDANCE: JAPANESE DEL REPEATED WELL-KNOWN POSITION THAT THEY NEED ADDITIONAL CLARIFICATION BEYOND THAT ALREADY PROVIDED IN REF (C) TO RESPOND TO U.S. REQUESTS. JAPAN REP STATED THEIR BELIEF THAT NO ADMINISTRATIVE GUIDANCE WAS PRACTICED IN SECTORS CITED IN REF (C). TERADA STATED THAT ONCE THE U.S. IDENTIFIED SPECIFIC PROBLEM AREAS, THE BEST FORUM TO TAKE UP SUCH PROBLEMS WOULD BE IN THE TRADE FACILITATION COMMITTEE. U.S. DEL POINTED OUT THAT U.S. REQUEST WAS CLEAR; WE ARE SEEKING A GENERAL GOJ COMMITMENT NOT TO USE ADMINISTRATIVE GUIDANCE TO RESTRICT IMPORTS.

C. STANDARD METHOD OF SETTLEMENT: JAPAN PROVIDED THE FOLLOWING STATEMENT, LABELED "CONFIDENTIAL", TO CLARIFY THE CONCESSION IT OFFERED:

BEGIN TEXT: THE GOVERNMENT OF JAPAN RECENTLY HAS DECIDED TO TAKE A PACKAGE OF MEASURES FOR THE PURPOSE OF FURTHER LIBERALIZATION OF FOREIGN EXCHANGE CONTROLS AND SIMPLIFICATION OF PROCEDURES THEREOF, AND NECESSARY PREPARATIONS ARE UNDERWAY TO PUT THEM INTO EFFECT AT THE EARLIEST POSSIBLE DATE.

WITH REGARD TO THE STANDARD METHOD OF SETTLEMENT FOR IMPORTS, THE GOVERNMENT OF JAPAN, WHILE SEEKING ITS FURTHER LIBERALIZATION INCLUDING ELIMINATION, DECIDED TO EXTEND THE DURATION OF STANDARD SETTLEMENT, AND AS A RESULT, BOTH ADVANCE PAYMENT WITHIN ONE YEAR BEFORE RECEIPT OF IMPORTED GOODS AND DEFERRED PAYMENT WITHIN SIX MONTHS AFTER CUSTOMS CLEARANCE WILL BE ALLOWED FREELY. IN ADDITION, DEFERRED PAYMENT OF

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CAPITAL GOODS, DURABLE CONSUMER GOODS AND GOODS UNDER
CONSIGNMENT DEAL CONTRACT MAY BE MADE FREELY AS LONG
AS THE PAYMENT IS MADE WITHIN ONE YEAR AFTER CUSTOMS
CLEARANCE.

(FYI: JAPANESE DEL POINTED OUT THAT THESE MEASURES ARE
SCHEDULED TO GO INTO EFFECT ON 1 MARCH. END FYI)

FURTHERMORE, THE GOVERNMENT OF JAPAN IS GOING TO
EXAMINE NEW MEASURES TO BE ADOPTED TO FURTHER LIBERAL-
IZE FOREIGN EXCHANGE CONTROLS AND PUT THEM INTO EFFECT
ONE AFTER ANOTHER. AT THE SAME TIME, THE GOVERNMENT
OF JAPAN WILL MAKE A THOROUGH STUDY ON A FUNDAMENTAL
REFORM OF THE PRESENT FOREIGN EXCHANGE CONTROL SYSTEM.
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END TEXT.

D. TRADING HOUSE PRACTICES ON CERTAIN LUMBER AND
WOOD PRODUCTS, BUILDING BOARD, AND ZINC: GOJ REP
STATED THAT THE REQUESTS REFER TO ALLEGED PRACTICES

OF PRIVATE FIRMS AND NOT GOJ ACTIVITIES. THEREFORE,
GOJ WAS NOT IN A POSITION TO RESPOND TO THE U.S.
REQUESTS.

E. VARIOUS LEATHER ITEMS: FOR REASONS PRESENTED IN
QR CONSULTATION (REF (D)), JAPAN DEL BELIEVES THERE IS
NO POSSIBILITY FOR LIBERALIZATION OF THE MEASURES
ITEMS.

F. TARIFF CLASSIFICATION OF BORAZON: JAPAN DEL
PROVIDED THE FOLLOWING STATEMENT, LABELED "CONFIDENTIAL"
TO CLARIFY ITS OFFER:

BEGIN TEXT:

- THE GOVERNMENT OF JAPAN IS PREPARED TO STUDY, PURELY
FROM THE TECHNICAL POINT OF VIEW, TO RECLASSIFY
BORAZON IN 7104, IF THE U.S. SIDE IS ABLE TO SHOW
US EITHER A CONCRETE CASE OR A DOCUMENTARY RECORD WHICH
PROVES BORAZON BEING TRADED FOR THE PURPOSE OF MAKING
ARTICLES OF ADORNMENT OR ORNAMENTATION.

END TEXT.

G. FERROUS SCRAP AND COPPER SCRAP: LACK OF JAPANESE
RESPONSE ON EXPORT RESTRICTIONS AFFECTING THESE ITEMS
SIGNIFIES THAT THEY ARE NOT IN POSITION TO MAKE A CON-
CESSION.

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H. CUSTOMS FORMALITIES ON CONSTRUCTION EQUIPMENT AND
HEAVY MACHINERY: GOJ CLAIMED THAT THEY HAD FOUND NO
EVIDENCE OF DIFFICULTIES REGARDING CUSTOMS FORMALITIES
ON THESE PRODUCTS. THEY ARE WILLING TO DISCUSS THIS
TOPIC FURTHER IF THE U.S. CAN POINT TO EXACT NATURE OF
THE PROBLEMS ENCOUNTERED WITH MORE PRECISION THAN INFOR-
MATION PROVIDED IN REF (C).

I. LIGHT AIRCRAFT: JAPANESE REP SOUGHT CLARIFICATION
AS TO DEFINITION OF "LIGHT AIRCRAFT, LOW-WING". ON
ASSUMPTION THAT THIS TERM REFERRED TO GENERAL AVIATION-
TYPE AIRCRAFT, JAPANESE DEL POINTED OUT THAT THESE TYPES
OF PLANES GENERALLY WEIGH LESS THAN 20,000 POUNDS AND
SUCH AIRCRAFT ARE NOT SUBJECT TO RESTRICTIONS. JAPANESE
OFFER WOULD EXTEND QUOTA LIBERALIZATION ONLY TO LIGHT-
WEIGHT GLIDERS AND ROTOCHUTES. ON LICENSING, JAPANESE
DEL CONTENDED THAT THE MEASURE IS NOT DISCRETIONARY
AND HAS BEEN AND WILL CONTINUE TO BE OPERATED IN A
NON-DISCRIMINATORY FASHION. LICENSING REQUIREMENT IS
IMPOSED FOR SECURITY REASONS AND JUSTIFIED UNDER THE

GATT.ONCE APPLICANTS FULFILL THE NECESSARY REQUIREMENTS
(I.E., DECLARE THE IMPORTED PLANES WILL NOT BE USED
FOR PURPOSES INCOMPATIBLE WITH NATIONAL SECURITY
POLICY) THE LICENSE IS AUTOMATICALLY GRANTED. JAPANESE
DEL DID ADMIT, HOWEVER, THAT THE PRESENT CRITERIA IS
FORMULATED IN VAGUE TERMS AND COULD GIVE RISE TO A
DIFFERENCE OF INTERPRETATION ON THE OPERATION OF THE
LICENSING MECHANISM.

J. ELECTRICAL MEASURING INSTRUMENTS CONTAINING
NUCLEAR ELEMENTS AND SPORTING FIREARMS: AS IN THE QR
CONSULTATION (REF (D)) JAPAN DEL STATED THAT THESE
MEASURES WERE COVERED BY GATT ARTICLE XX, GOJ IS
NOT IN A POSITION TO LIBERALIZE THESE MEASURES. IN
GOJ VIEW, THE CURRENT MEASURES DO NOT HAVE A RESTRICTIVE
EFFECT AND WILL CONTINUE TO BE SO ADMINISTERED.
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5. COMMENT: SESSION PROVIDED A HIGHLY USEFUL CLARI-
FICATION OF ISSUES, ESPECIALLY ON ITEMS WHERE JAPAN
HAD NOT PREVIOUSLY RESPONDED TO U.S. REQUESTS. THIS
CLARIFICATION, HOWEVER, ONLY STRENGTHENS OUR CONVICTION
CONCERNING THE SHORTCOMINGS OF JAPANESE OFFER (N.B. PARA-

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GRAPH 4(I). THE TONE OF THE 23 FEBRUARY BILATERAL MEETING OBVIOUSLY MADE A CLEAR IMPRESSION WITH THE JAPANESE AS REFLECTED IN TERADA'S PRESENTATION DESCRIBED IN PARAGRAPH 3 ABOVE. THUS, THE STAGE HAS BEEN SET FOR TOUGH BARGAINING SESSIONS WITH JAPAN IN THE MTN. END COMMENT.

6. FYI: IN CONVERSATION SUBSEQUENT TO MEETING, LOCAL JAPANESE FOREIGN OFFICE REP EXPRESSED SATISFACTION WITH U.S. REQUEST FOR A GENERAL STATEMENT CONCERNING ADMINISTRATIVE GUIDANCE. HE STATED THAT FOREIGN OFFICE HAS LONG ADVOCATED SUCH A COMMITMENT BUT THAT STRONG RESISTANCE HAS COME FROM MITI. OUR SOURCE ENCOURAGED OUR EFFORTS AND SUGGESTED THAT CONTINUED PRESSURE BY THE U.S. AT THE HIGHEST POSSIBLE LEVELS MIGHT PRODUCE LIMITED OFFICIAL USE

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SATISFACTORY RESULTS. HE ADDED THAT MITI ATTITUDE IS THAT ADMINISTRATIVE GUIDANCE IS A NORMAL FUNCTION OF GOVERNMENT. END FYI.

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